

Appl. No. 10/780,846
Atty. Docket No. 9527L\$
Amdt. dated March 5, 2007
Reply to Office Action of December 5, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1-20 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102 Over Bustin (GB 1,301,198)

The Office Action rejects claims 1, 3, 12, 14-16 and 18 under 35 USC §102(a) as anticipated by Bustin (GB 1,301,198). Applicant respectfully traverses this rejection. Applicant submits that the cited reference fails to teach each of the limitations of the invention as claimed.

Applicant claims methods for making articles having elastic-like behavior. Claim 1 also includes the limitation of forming a portion of sheet material into a strainable network. Nothing in the cited reference can be said to teach the manufacture of an article having elastic-like behavior, or the formation of a strainable network. Embossed plastic films as taught by the reference are not inherently elastic-like in their behavior and do not inherently possess strainable networks. The reference does not expressly teach that the particular films are elastic-like or that they comprise strainable networks. Neither are the limitations which are not expressly taught suggested or inherently present in the disclosed structures of the reference.

Anticipation requires that a single reference teach or suggest each of the limitations of the invention as claimed, or that any limitations not explicitly taught or suggested be inherently present in the reference. Inherency requires that the limitation be necessarily present in the teachings and not simply a possibility in some combination of disclosed circumstances from the reference.

The process taught in the *Bustin* references includes a number of variables, roll temperature, relative speed of the roll and the substrate and the nature of the structures on each of the embossing rolls, additionally, embossing nip pressure, depth of engagement and other variables can also affect the result of passing a material through an embossing nip.

The Office Action provides that the claimed features of the invention are inherently present in the teachings of *Bustin* due to a similar method of manufacture. By pursuing a rejection based upon inherency, the Office Actions takes the position that any

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and all plastic films passed through an embossing process configured with any and all possible combinations of the variables disclosed in the reference will yield a film necessarily possessing a stainable network and having elastic like behavior. The reference itself makes no mention of the features of elastic-like behavior or a strainable network as being an outcome of any possible combination of the set of variables.

Applicant submits that the Office Action has overreached in this argument and that there is no basis in the teaching of the *Bustin* reference to support the overarching conclusion that the films disclosed possess elastic like behavior and comprise a strainable network.

Applicant submits that the features imparted to a substrate during an embossing process are diverse depending upon the specific and exact nature of a significant number of variables associated with the process. Sufficient diversity of results exists that it is not possible to establish that the claimed features are necessarily present in any embossed film because they are not necessarily present.

Absent more than a conclusory submission that claimed features are necessarily present in the disclosed materials based upon an assumption that any and all embossed films processed by any and all embossing processes are the same, Applicant submits that the Office Action fails to properly support a anticipatory rejection in that the claimed features have not been demonstrated by the Office Action to be necessarily present in any and all structures disclosed by the reference.

It is further noted that although Applicant claims include a step of separating pleated portions of an overlapped sheet material, the *Bustin* reference teaches a method for separating portions of an embossed tube of material not an overlapped sheet of material. As to separating an overlapped sheet of material, *Bustin* is silent.

Applicant requests that the rejection of the claims under 35 USC §102 be reconsidered and withdrawn.

Rejection Under 35 USC §103(a)

Claims 2, 4, 10 and 12 has been rejected under 35 USC §103(a) as being unpatentable over *Bustin* in view of Cronauer (US 5,709,069). This rejection is traversed

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because the combined references fail to establish a *prima facie* case of obviousness under 35 USC §103(a).

The deficiencies of the *Bustin* reference noted above are not cured by the addition of the *Cronauer* reference. The combination of references fails to teach or suggest each of the limitations of the invention as claimed and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a).

Claims 2, 4-9, 10-11, 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bustin* as applied to claim 1 above and further in view of *Rowe et al.* (US 2615375), or *LaFleur et al.* (US 4481006), or *Yisha et al.* (US 5956929), or the collective teachings of and *Hiramoto et al.* (US 6446684) and *Henaux* (US5845463) and *Adelmann* (US 5564252) and *Muller* (US 5279095). Applicant respectfully traverses this rejection.

The combination of *Bustin* with any of the secondary references fails to cure the base deficiency of the *Bustin* reference with respect to the invention as claimed. The *Bustin* reference does not teach or suggest the limitations of the invention as set forth in either of the independent claims. The addition of other references to provide the limitations of dependent claims fails to cure this basic fault of the rejections.

The Office Action rejects claim 13 under 35 USC §103(a) as being unpatentable in view of *Bustin* in combination with *Meyer*, (US 6,394,652). *Meyer* is offered for the limitation of incorporating a closure into the bags of *Bustin*. The addition of a closure to the bags described in the *Bustin* reference fails to cure the deficiency of *Bustin* with regard to the elastic like nature of the claimed article or the formation of a strainable network in the sheet of the article.

The Office Action rejects claims 1, 3, 12-16, and 18-19 under 35 USC §103(a) as being unpatentable over *Meyer* (US 6,394,652) in view of *Bustin* or alternatively, *Bustin* in view of *Meyer*. Applicant respectfully traverses this rejection.

Applicant acknowledges that *Meyer* is silent as to separating multiple sheets of formed material. Applicant submits that *Bustin* is also silent in this regard. *Bustin* teaches an inflation method for opening a tube of material after an embossing process. Nothing in the reference teaches or suggests that such an inflation step is applicable to an overlapped sheet material.

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The Office Action rejects claims 2, 4, 10, and 12 as being unpatentable over a combination of *Meyer, Bustin*, and *Cronauer*. Applicant respectfully traverses this rejection.

Nothing in the *Cronauer* reference cures the deficiencies of the *Meyer / Bustin* combination with regard to the invention as set forth in claims 2, 4, 10, and 12.

The Office Action rejects claims 2, 4-11, 17, and 19-20, under 35 USC §103(a) as being unpatentable over *Meyer* and *Bustin* as applied to claim 1, and further in view of *Rowe et al.*, or *LaFluer et al.*, or *Yisha et al.*, or the collective teachings of *Hiramoto et al.*, and *Henaus*, and *Aselmann*, and *Muller*. Applicant respectfully traverses this rejection.

As provided above, the combination of *Meyer* and *Bustin* fails to render the subject matter of claim 1 obvious. None of the four additional suggested combinations cures the cited deficiencies of the *Meyer / Bustin* combination with regard to the separation of the layers of an overlapped sheet material.

Applicant respectfully requests that the rejections under 35 USC §103(a) be reconsidered and withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §§ 102, 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-20 is respectfully requested.

Respectfully submitted,

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